

## DEPARTMENT OF HEALTH SERVICES

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SACRAMENTO, CA 94234-7320

(916) 322-1584

March 7, 1994  
CMSP Letter 94-2

TO: County Medical Services Program (CMSP) Welfare Directors

SUBJECT: PROPOSED ELIGIBILITY MANUAL REVISIONS

The Eligibility Subcommittee of the Small County Advisory Committee (SCAC) has requested that participating counties provide additional comments on the proposed CMSP Eligibility Manual revisions which would change the current transfer of assets restrictions. The latest version of those revisions (attached) incorporate changes suggested by counties.

Prior to final approval, the Subcommittee is seeking direct feed back from you concerning the estimated number of times (on an annual basis) these transfer of assets restrictions would be used. Further, the Subcommittee requests comments on two recent suggestions that the "look back" period for considering transfers be shortened from six (6) months to either three (3) months or one (1) month.

Since the Subcommittee seeks to complete work on this issue at its March 1994 meetings, your written information and comments should be forwarded no later than March 18, 1994 to:

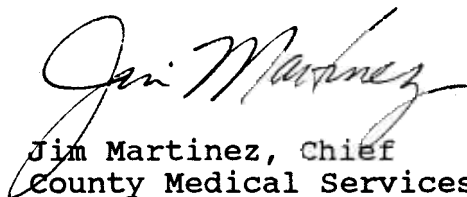
California Department of Health Services  
Office of County Health Services  
Attention: Mr. Albert Cooper  
1800 Third Street, Room 100  
P.O. Box 942732  
Sacramento, CA 94234-7320

If you have any questions regarding this letter, please contact

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Mr. Albert Cooper, of my staff, at (916) 322-1615. Thank you for your expedited attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "Jim Martinez". The signature is written in dark ink and is positioned above the printed name and title.

Jim Martinez, Chief  
County Medical Services Program

Enclosure  
cc: CMSP Contact Persons

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## Article 7. Property

0401. Property Evaluation.

After determining the composition of the CFBU, the county department shall evaluate the property holdings of the CFBU to determine:

- (a) Property to be included in determining eligibility
- (b) The value of the included property.
- (c) Whether the total value of the included property exceeds the property reserve limits specified in Section 0420.

0401.5. Property Evaluation - Sneeede v. Kizer

The county department shall consider the results of a Medi-Cal eligibility determination made pursuant to the Sneeede v. Kizer lawsuit for any CMSP Applicant/Eligible who was included in the Medi-Cal determination.

- (a) All property Attributed to a CMSP applicant/eligible from a Sneeede v. Kizer calculation shall be included in their property reserve.
- (b) The property reserve shall be compared with the appropriate property limit shown in Section 0420 in order to determine eligibility.

0402. Availability of Property.

Property which is not available shall not be considered in determining eligibility. Property not available includes, but is not limited to, any property affected by court action/legal proceedings which is frozen until such action/proceedings are completed.

0403. Treatment of Property.

The separate property and share of community property of any person included in the CFBU shall be considered in determining CMSP eligibility. A spouse's share of community property is always one-half of the current total community property.

0404. Owner of Property.

The owner of property, for CMSP eligibility purposes, shall be the person who holds legal title to the property unless otherwise specified in these regulations. Ownership of property may be vested in one individual or shared with other individuals.

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**DRAFT**0405. Contracts of Sale.

Property purchased under a signed contract of sale by the applicant or beneficiary shall be included in the property reserve of the applicant or beneficiary.

Property being sold by the applicant or beneficiary under a signed contract of sale shall not be considered the property of the applicant or beneficiary. The interest payments received under the contract of sale shall be unearned income. The principle payments received under the contract of sale shall be property.

Property being purchased or sold under a verbal or unsigned contract of sale shall be considered the property of the seller until the sale is complete.

0406. Conversion or Transfer of Property.

Conversion or transfer of property may affect eligibility. Sections 0407 and 0408 describe methods of converting or transferring property, and the effect of each method on eligibility.

0407. Conversion of Property--Treatment.

Conversion of property in itself from one form to another has no effect on eligibility; however, the property obtained through a conversion may have an effect on eligibility and therefore shall be evaluated to determine its effect. Insurance or other third-party payments for the loss or damage of property shall be treated as converted property rather than income.

0408. Transfer of Property Which Does Not Result In Ineligibility.

Transfer of property shall not result in ineligibility for CMSP under any of the following conditions:

- (1) The property would have been considered exempt pursuant to Section 0418 at the time of transfer.
- (2) The net market value of the property transferred, when included in the property reserve, would not result in ineligibility. The determination of value shall be made as of the time of transfer. If eligibility exists, the value of the property shall no longer be considered.
- (3) Adequate consideration is received. Adequate consideration is the fair market value of the property as defined in Section 0412 and includes:

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A transfer which was to satisfy a legal debt

A transfer which was to reimburse someone other than a responsible relative, as specified in Section 0351, for care or benefits provided on the basis of an agreement or understanding that reimbursement would be made. The applicant or beneficiary shall provide evidence that clearly establishes that the value of the care or benefits provided was reasonably equivalent to the value of the property transferred.

A written transmission of a married couple's non-exempt community property into equal shares of separate property through an interspousal agreement.

- 4) Foreclosure or repossession of the property was imminent at the time of transfer, and there is no evidence of collusion.
  - 5) The transfer was made in return for an enforceable contract for life care, which does not include complete medical care. In this case each full item of need provided under the life care contract shall be considered income in kind in accordance with Section 0509.
  - 6) The transfer was made without adequate consideration but the applicant or beneficiary provides sufficient evidence, as specified in Section 0409 (b), to overcome the presumption that the transfer was for the purpose of establishing eligibility or reducing the share of cost.
- (b) There is a presumption that property transferred by the applicant or beneficiary more than 6 months preceding the date of initial application was not transferred to establish eligibility or reduce the share of cost. Such property shall not be considered in determining eligibility.
- (c) While the transfer of property by an applicant or beneficiary from one form to another as described (a) above, has no effect on eligibility, any property obtained by an applicant or beneficiary through such a transfer may have an effect on eligibility and therefore shall be evaluated to determine its effect.

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0409. Transfer of Property Which Results in Ineligibility.

Transfer of property shall result in ineligibility for CMSP if:

- (1) The transfer met none of the conditions specified in Section 0408: or
  - (2) The transfer was in return for an enforceable life care contract which includes complete medical care.
- (b) Transfer of property without adequate consideration shall result in ineligibility for CMSP if the transfer was made to establish eligibility or to reduce the share of cost.
- 1) It shall be presumed that property transferred without adequate consideration was for the purpose of establishing eligibility or to reduce the share of cost as limited by (2).
  - (2) To overcome the presumption the applicant or beneficiary has the burden of establishing that the presumption is not correct.
    - (A) The applicant or beneficiary shall provide evidence which may include verification of the onset of traumatic injury or illness, diagnosis of a previously undetected disability condition or unexpected loss of income or resources after transfer and/or that adequate resources were available at the time of the transfer of property for support and medical care considering such things as the applicant's or beneficiary's age, health, life expectancy, and ability to understand extent of resources.
    - (B) Such evidence may also include other subjective evidence including, but not limited to, evidence that the claimant transferred in order to avoid probate and/or that the claimant had no knowledge of CMSP or its benefits at the time of the transfer.
    - (C) However, any such evidence presented must be convincing evidence in order to overcome the presumption stated in (b) (1) above.

0411. Period of Ineligibility Due to Transfer of Property

Following a determination of ineligibility due to the transfer of property, there shall be a period of ineligibility. This period shall be the time during



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which the net market value of the property at the time of transfer, less consideration received, would have supported the applicant or beneficiary and the applicant's or beneficiary's family.

(b) The period of ineligibility shall be computed in following manner:

- 1 Determine the net market value of the property at the time of transfer less any consideration received which is the net value of the property transferred.
- (2) Determine the portion of the net value of the property transferred which, if included in the property reserve at the time of transfer, would not have caused such reserve to exceed the property limit that was applicable at that time.
- (3) The portion of the net value of the property transferred that would not have fallen within the property limit at the time of transfer is the excess net value of the property transferred and shall be used to determine the period of ineligibility.
- (4) The number of months in the period of ineligibility shall be determined by dividing the excess net value of the property transferred by the monthly maintenance need for the applicant or beneficiary and the applicant's or beneficiary's family. The maintenance needs used shall be the maintenance needs in effect during each individual month since the date of the transfer. Income received by the family after the transfer shall not affect this computation.
- (5) The period of ineligibility may be further reduced by deducting the actual cost of the applicant or beneficiary or the following:
  - (A) Medical expenses.
  - (B) Out-of-Home care costs in excess of maintenance needs.
  - (C) Major home repairs necessary to put the home into a livable condition.
  - (D) The period of ineligibility shall with the month the transfer which resulted in ineligibility occurred, unless a 10 day notice is required and

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cannot be given. In that case, the period of ineligibility shall begin the first of the next month.

(E) The period of ineligibility shall end when of the following situations occur:

- (1) The property which was transferred and caused ineligibility is reconveyed to the applicant or beneficiary.
- (2) The applicant or beneficiary receives adequate consideration for the property.
- (3) Deduction of the amounts specified in (4) and (5) has reduced the excess market value to zero.

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